

# Personal Services Contract

CONTRACT NO. K261

BETWEEN  
WASHINGTON STATE  
TRANSPORTATION COMMISSION  
AND  
<Vendor Name>

THIS CONTRACT made by and between the Washington State Transportation Commission, hereinafter referred to as the "COMMISSION" and <Vendor Name>, Inc., hereinafter referred to as the "Consultant".

## **PERIOD OF PERFORMANCE**

The period of performance under this Contract will be from <Insert date> or the date the Contract is executed by the COMMISSION, whichever is later, through <Insert date>, unless sooner terminated as provided herein.

The established completion time shall not be extended because of any delays attributable to the Consultant, but may be extended by the COMMISSION, in the event of a delay attributable to the COMMISSION, or because of unavoidable delays caused by an act of God or governmental actions or other conditions beyond the control of the Consultant. A prior contract amendment issued by the COMMISSION is required to extend the established completion time. In the event of such delays, COMMISSION shall pay the Consultant for the work performed on the project for milestone reached prior to the period of delay equivalent to the value of the work performed by Consultant as agreed to by both parties.

## **STATEMENT OF WORK**

The Consultant shall furnish all services, labor, equipment, materials, supplies, and otherwise do all things necessary for or incidental to the performance of work as detailed in <Exhibit Number>, Washington State Transportation Plan, which is attached hereto and by reference made a part of this Contract.

Exhibit A contains the General Terms and Conditions governing work to be performed under this Contract, the nature of the working relationship between the COMMISSION and the Consultant, and specific obligations of both parties. Exhibit A is also attached hereto and by reference made a part of this Contract.

## **COMPENSATION AND PAYMENT**

The COMMISSION shall pay a firm fixed price not to exceed <price> for the performance of all things necessary for or incidental to the performance of work as set forth in <Exhibit Number>. Consultant's compensation for services rendered shall be in accordance with the Washington Transportation Plan Work Plan, <Exhibit Number>, Budget Summary, and Request for Proposals, which are attached hereto and by this reference made part of this Contract.

Payments made by the COMMISSION to the Consultant are full compensation for all labor, equipment, materials, supplies and incidentals necessary to complete the Washington State Transportation Plan, <Exhibit Number>, for this Contract and in accordance with Exhibits C and D.

Payments shall be made in accordance with the Payment Schedule <Exhibit Number>.

# **Personal Services Contract**

## **Invoice and Payment Procedures**

All invoices for payment will be invoiced to Washington State Transportation Commission. The COMMISSION will pay the Consultant upon receipt of properly completed invoices, which shall be submitted not more often than monthly. The invoices shall describe and document to the COMMISSION's satisfaction a description of the work performed, the progress of the project and fees.

Payment shall be considered timely, if made by the COMMISSION within thirty (30) days after receipt of properly completed invoices. Invoices shall reference the COMMISSION Contract No. K261. Invoices shall be sent to:

Washington State Transportation Commission  
Attn.: Paul Parker  
PO Box 47308  
Olympia, WA 98504-7308

All Payments will be remitted by mail.

## **CONTRACT PROJECT MANAGEMENT**

### **Consultant Project Manager**

Consultant shall appoint a Project Manager for the COMMISSION's account under this Contract who will provide oversight of Consultant activities conducted hereunder. Consultant's Project Manager will be the principal point of contact for the COMMISSION concerning Consultant's performance under this Contract. Consultant shall notify the COMMISSION Contract Administrator and the COMMISSION Project Manager, in writing, when there is a new Consultant Account Manager assigned to this Contract. The Consultant Project Manager information is:

Consultant Project Manager:  
Address:  
Phone:  
Fax:  
E-mail:

### **COMMISSION Project Manager**

The COMMISSION shall appoint a COMMISSION's Technical Project Manager for this Contract and will provide oversight of the activities conducted hereunder. The COMMISSION's Technical Project Manager will be the principal contact for Consultant concerning business activities under this Contract. The COMMISSION shall notify Consultant, in writing, when there is a new COMMISSION's Technical Project Manager assigned to this Contract. The COMMISSION Technical Project Manager information is:

COMMISSION Technical Project Manager:  
Address:  
Phone:  
Fax:  
E-mail:

## **ASSURANCE**

The COMMISSION and the Consultant agree that all activity pursuant to this Contract will be in accordance with all applicable current federal, state and local laws, rules and regulations.

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## **ORDER OF PRECEDENCE**

The items listed below are incorporated by reference herein. In the event of an inconsistency in this Contract, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:

- A. Applicable Federal and Washington State Statutes and Regulations,
- B. Special Terms and Conditions as contained in this Basic Contract instrument,
- C. Exhibit A - General Terms and Conditions,
- D. Exhibit B -
- E. Exhibit C -
- F. Exhibit D - Request for Proposals No. ACQ-2009-0610-RFP
- G. Exhibit E – Consultant’s Proposal dated <date>, and
- H. Any other provision, term or material incorporated herein by reference or otherwise incorporated.

## **CONFORMANCE**

If any provision of this Contract violates a statute or rule of law of the State of Washington, it is considered modified to conform to that statute or rule of law.

## **ENTIRE AGREEMENT**

This Contract including referenced Exhibits represents all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

IN WITNESS WHEREOF: The COMMISSION and the Consultant have signed this Contract.

Cambridge Systematics

Washington State  
Transportation Commission

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name and Title

APPROVED AS TO FORM:

\_\_\_\_\_  
Assistant Attorney General

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## EXHIBIT A

### GENERAL TERMS AND CONDITIONS

1. DEFINITIONS -- As used throughout this Contract, the following terms shall have the meaning set forth below:

"COMMISSION" shall mean the Washington State Transportation Commission, of the State of Washington, any division, section, office, unit or other entity of the Commission, or any of the officers or other officials lawfully representing the Commission. For purposes of this Contract, any reference to state agencies shall include the Commission.

"Consultant" shall mean that firm, provider, organization, individual or other entity performing services under this Contract, and shall include all employees of the Consultant.

"Subcontractor" shall mean one not in the employment of the Consultant, who is performing all or part of those services under this Contract under a separate contract with the Consultant. The terms "Subcontractor" and "Subcontractors" means Subcontractor(s) in any tier.

2. INDEPENDENT CAPACITY OF THE CONSULTANT – The parties intend that an independent consultant relationship will be created by this Contract. The Consultant and his or her employees or agents performing under this Contract are not employees or agents of COMMISSION. The Consultant will not hold himself/herself out as nor claim to be an officer or employee of COMMISSION or of the state of Washington by reason hereof, nor will the Consultant make any claim of right, privilege or benefit which would accrue to an employee under law. Conduct and control of the work will be solely with the Consultant.

3. COMPLIANCE WITH CIVIL RIGHTS LAWS

During the performance of this Contract, Consultant shall comply with all federal and applicable state nondiscrimination laws, including but not limited to: Title VI, Non-Discrimination, Title 49 CFR, Part 21 and Title VII of the Civil Rights Act, 42 U.S.C. §12101 et seq.; the Americans with Disabilities Act (ADA); and Title 49.60 RCW, Washington Law Against Discrimination. In the event of Consultant's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled, or terminated in whole or in part under the Termination for Default sections, and Consultant may be declared ineligible for further contracts with the COMMISSION.

4. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS -- In the event of the Consultant's noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy this Contract may be rescinded, canceled or terminated in whole or in part, and the Consultant may be declared ineligible for further contracts with the COMMISSION. The Consultant shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

5. UTILIZATION OF MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – In accordance with legislative findings and policies set forth in Chapter 39.19 RCW the COMMISSION encourages participation by Minority and Women's Business Enterprise firms certified by OMWBE. Voluntary goals for participation are set forth in the special terms and conditions of this Contract.

If any part of this Contract, including the supply of materials or equipment, is actually subcontracted during this Contract, then prior to final acceptance the Consultant shall submit a

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statement of participation indicating what WMBE's were used and the dollar amount of their subcontractors.

6. SUBCONTRACTING --Neither the Consultant nor any Subcontractor shall enter into subcontracts for any of the work contemplated under this Contract without obtaining prior written approval of the COMMISSION. The COMMISSION hereby grants Consultant the approval to use the subcontractors set forth in Exhibit F.

No permission for subcontracting shall create between the Commission and subcontractor any contract or any other relationship.

Additionally, the Consultant is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this Contract are carried forward to any subcontracts.

7. INDEMNIFICATION – To the fullest extent permitted by law, Consultant shall indemnify, and hold the State of Washington, agencies of the State including the Commission and all officials, agents and employees of the State harmless from and shall process and defend at its own expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages or costs, of whatsoever kind or nature brought against the State arising out of, in connection with or incident to the execution of this Contract and/or Consultant's negligent or wrongful performance or failure to perform any aspect of this Contract. Provided, however, that if such claims are caused by or result from the concurrent negligence of (a) the Consultant, its agents and/or employees and (b) the State, its agents, employees and/or officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Consultant, its agents and/or employees and provided further, that nothing herein shall require the Consultant to hold harmless or defend the State, its agents, employees and/or officers from any claims arising from the sole negligence of the State and/or its agents, employees and/or officers. This indemnification shall survive any termination of this Contract.

Consultant waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the State and its agencies, officials, agents or employees.

8. COVENANT AGAINST CONTINGENT FEES -- The Consultant warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agent maintained by the Consultant for the purpose of securing business. The COMMISSION shall have the right, in the event of breach of this clause by the Consultant, to annul this Contract without liability or, in its discretion, to deduct from the Contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.
9. CONFLICT OF INTEREST – The COMMISSION may, by written notice to the Consultant terminate this Contract if it is found after due notice and examination by the COMMISSION that there is a violation of the; Ethics in Public Service Act, Chapter 42.52 RCW or any similar statute involving the Consultant in the procurement of, or performance under, this Contract.

In the event this Contract is terminated as provided above, the COMMISSION shall be entitled to pursue the same remedies against the Consultant as it could pursue in the event of a breach of the Contract by the Consultant. The rights and remedies of the COMMISSION provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the COMMISSION makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this Contract.

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10. TREATMENT OF ASSETS --Title to all property furnished by the COMMISSION shall remain in the COMMISSION. Title to all property furnished by the Consultant, for which the Consultant is entitled to be reimbursed as a direct item of cost under this Contract, shall pass to and vest in the COMMISSION upon delivery of such property by the Consultant. Title to other property, the cost of which is reimbursable to the Consultant under this Contract, shall pass to and vest in the COMMISSION upon (i) issuance for use of such property in the performance of this Contract, or (ii) commencement of use of such property in the performance of this Contract, or (iii) reimbursement of the cost thereof by the COMMISSION in whole or in part, whichever first occurs.
- A. Any property of the COMMISSION furnished to the Consultant shall, unless otherwise provided herein or approved by the COMMISSION, be used only for the performance of this Contract.
  - B. The Consultant shall be responsible for any loss or damage to property of the State of Washington, which includes the property of the Washington State Department of Transportation (WSDOT) and of the COMMISSION which results from the negligence of the Consultant or which results from the failure on the part of the Consultant to maintain and administer that property in accordance with sound management practices.
  - C. If any property referred to above in subsection B is lost, destroyed or damaged, the Consultant shall immediately notify the COMMISSION and shall take all reasonable steps to protect the property from further damage.
  - D. The Consultant shall surrender to the COMMISSION all property of the COMMISSION prior to settlement upon completion, termination or cancellation of this Contract.

All reference to the Consultant under this clause shall also include Consultant's employees, agents or Subcontractors.

11. ASSIGNMENT-- The work to be provided under this Contract, and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.
12. RECORDS MAINTENANCE – The Consultant shall maintain all books, records, documents, data and other evidence relating to this Contract and performance of the services described herein, including but not limited to, accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. Consultant shall retain such records for a period of six (6) years following the date of final payment. At no additional cost, these records, including materials generated under this Contract, shall be subject at all reasonable times to inspection, review or audit by the COMMISSION, personnel duly authorized by the COMMISSION, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

13. CONFIDENTIALITY / SAFEGUARDING INFORMATION - Consultant acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.17 RCW or other

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state or federal statutes ("Confidential Information"). Confidential information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, agency source code or object code, or agency security data. Consultant agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release or disclose it to any other party. Consultant agrees to release such information or material only to employees or Subcontractors who have signed a nondisclosure agreement, the terms of which have been previously approved by the COMMISSION. Consultant agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.

Immediately upon expiration or termination of this Contract, Consultant shall, at the COMMISSION's option: (i) certify to the COMMISSION that Consultant has destroyed all Confidential Information, or (ii) return all Confidential Information to the COMMISSION, or (iii) take whatever other steps the COMMISSION requires of Consultant to protect the COMMISSION's Confidential Information.

Consultant shall maintain a log documenting the following: the Confidential Information received in the performance of this Contract; why the Confidential Information was received; who received, maintained and used the Confidential Information; the purposes of which the Confidential Information was received; and the final disposition of the Confidential Information. Consultant's records shall be subject to inspection, review or audit in accordance with clause number 12. Records Maintenance.

The COMMISSION may use any reasonable procedures, such as salting databases, to determine how Consultants and Subcontractors use Confidential Information obtained through performance of this Contract.

Violation of this section by Consultant or its Subcontractors may result in termination of this Contract, monetary damages, or penalties.

14. RIGHT OF INSPECTION -- The Consultant shall provide right of access to its facilities to the COMMISSION, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract.
15. SITE SECURITY -- While on State of Washington property, including Washington State Department of Transportation (WSDOT) and COMMISSION premises, Consultant, its agents, employees, and/or subcontractors shall conform in all respects with physical, fire or other security regulations.
16. AUDIT REQUIREMENT / ACCESS TO DATA -- In compliance with chapter 39.29 RCW, the Consultant shall provide access to data generated under this Contract to the COMMISSION, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This included access to all information that supports the findings, conclusions, and recommendations of the Consultant's reports, including computer models and methodology for those models.
17. COPYRIGHTS PROVISIONS -- Unless otherwise provided, all materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be

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owned by the COMMISSION. The COMMISSION shall be considered the author of such materials.

If materials are not considered "works for hire," Consultant hereby irrevocably assigns all right, title, and interest in materials, including all intellectual property rights, to the COMMISSION effective from the moment of creation of such materials.

Materials mean all items in any format and included, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

For materials that are delivered under this Contract, but that incorporate preexisting materials not produced under this Contract, Consultant hereby grants to the COMMISSION and WSDOT a nonexclusive, royalty-free, irrevocable license in such materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly displayed when such use is solely for COMMISSION and WSDOT. The Consultant warrants and represents that Consultant has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the COMMISSION. The Consultant shall exert all reasonable effort to advise the COMMISSION, at the time of delivery of data furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Contract. The COMMISSION shall receive prompt written notice of each notice or claim of infringement received by the Consultant with respect to any data delivered under this Contract.

18. REGISTRATION WITH DEPARTMENT OF REVENUE -- The Consultant shall complete registration with the Washington State Department of Revenue, and be responsible for payment of all taxes due on payments made under this Contract.
19. LICENSING, ACCREDITATION AND REGISTRATION -- The Consultant shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this Contract.
20. INDUSTRIAL INSURANCE COVERAGE -- The Consultant shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the Consultant fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, the COMMISSION may collect from the Consultant the full amount payable to the Industrial Insurance accident fund. The COMMISSION may deduct the amount owed by the Consultant to the accident fund from the amount payable to the Consultant by the COMMISSION under this Contract, and transmit the deducted amount to the Department of Labor and Industries (L&I), Division of Insurance Services.

This provision does not waive any of L&I's rights to collect from the Consultant.

21. INSURANCE REQUIREMENTS - Consultant shall, during the term of this Contract, and at its expense acquire and maintain in full force and effect, the insurance described in this section. Consultant shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the state of Washington having a rating of A-, Class VII or better, in the most recently published edition of Best's Reports. In the event of cancellation, non-renewal, revocation, or other termination of any insurance coverage required by this Contract, Consultant shall provide written notice of such to the COMMISSION within ten (10) Business Day of Consultant's receipt of such notice. Failure to buy and maintain the required insurance may, at the COMMISSION's sole



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option, result in this Contract's termination. Furthermore, within fourteen (14) days of the execution of this Contract, Consultant shall deliver to the COMMISSION certificates of insurance evidencing the acquisition of insurance required by this Contract.

The minimum acceptable limits shall be as indicated below, with no deductible unless otherwise specified, for each of the following categories:

- a) Commercial General Liability (CG 00 01 10 93, ISO or a later version of the same form or equivalent) covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate, written on an "occurrence" policy form not a "claims made" policy form;
- b) Business Automobile Liability (CA 00 01 07 97, ISO) or a later version of the same form or equivalent (covering owned, hired, or non-owned vehicles) the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than \$1 million per accident;
- c) Employers Liability insurance covering the risks of Consultant's employees' bodily injury by accident or disease with limits of not less than \$1 million per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease, written on an "occurrence" policy form not a "claims made" policy form;
- d) Professional Liability Errors and Omissions, with a deductible not to exceed \$500,000, and coverage of not less than \$1 million per occurrence/\$2 million general aggregate;
- e) Crime Coverage with a deductible not to exceed \$50,000, and coverage of not less than \$250,000 single limit per occurrence which shall, at a minimum, cover occurrences falling in the following categories: Computer Fraud; Forgery; Money and Securities; and Employee Theft;
- f) Copyright Infringement of title, slogan, trademark, trade name, trade dress, and service mark violation coverage arising from the rendering of the professional services under the Contract, in the amount of \$1 million per occurrence, with the COMMISSION as the Insured or an Additional Insured, to protect the COMMISSION from claims arising from the work, and the products developed and/or used in connection with this Contract, and
- g) Umbrella policy providing excess limits over the Commercial General Liability, Business Automobile Liability, and Employers Liability referenced above in an amount not less than \$3 million.

**The Professional Liability Coverage required by this section must include coverage for claims for injury and/or damage of any type or nature arising from the Consultants rendering of professional services including potential claims of both third parties and the COMMISSION. Coverage must include but not be limited to claims for loss of use and/or damage to the State of Washington property including Washington State Department of Transportation and COMMISSION property due to the incorporation of the Consultant's products and/or work.**

For Professional Liability Errors and Omissions coverage and Crime Coverage, Consultant shall: (i) continue such coverage for six (6) years beyond the expiration or termination of this Contract, and providing the COMMISSION with certificates of insurance on an annual basis;

Such insurance policies or related Certificates of Insurance (Certificates) shall name the COMMISSION as an Additional Insured on all general liability, automobile liability, and umbrella policies. Such policies or related Certificates shall also reference this Contract number **AD00003** and shall have a condition that they not be revoked by the insurer until forty-five (45) calendar days after written notice of intended revocation thereof shall have

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been given to the COMMISSION by the Consultants Insurance Broker. Under no circumstances will the COMMISSION be liable for any policy premiums or deductibles.

All insurance provided by Consultant shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State and shall include a severability of interests (cross-liability) provision.

Consultant shall furnish to the COMMISSION copies of certificates of all required insurance within fourteen (14) calendar days of this Contract's Effective Date and copies of renewal certificates of all required insurance within thirty (30) days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section.

By requiring insurance herein, the COMMISSION does not represent that coverage and limits will be adequate to protect Consultant, nor limit the COMMISSION's right to seek additional recovery from the Consultant. Such coverage and limits shall not limit Consultant's liability under the indemnities and reimbursements granted to the COMMISSION in this Contract.

Failure to comply with the insurance coverages in this section may result in the COMMISSION withholding progress payments until such time the Consultant has fully complied with this section or the COMMISSION may take such action as is available to it under the provisions of this Contract including but not limited to Contract termination. Nothing in these instructions shall relieve the Consultant from complying with other laws or regulations as may apply.

22. ADVANCE PAYMENTS PROHIBITED -- No payments in advance, in anticipation of goods or services are to be provided under this Contract, shall be made by the COMMISSION.
23. PUBLICITY -- The Consultant agrees to submit to the COMMISSION all advertising and publicity matters relating to this Contract, which in the COMMISSION's judgment, the COMMISSION's name can be implied or is specifically mentioned. The Consultant agrees not to publish or use such advertising and publicity matters without the prior written consent of the COMMISSION.
24. LIMITATION OF AUTHORITY -- Only the Agent or Agent's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this Contract is not effective or binding unless made in writing and signed by the Agent.
25. WAIVER -- Any waiver shall not be construed to be a modification of terms of this Contract, unless stated to be such in writing and signed by an authorized representative of the COMMISSION.
26. ALTERATIONS & AMENDMENTS -- The COMMISSION may, at any time, by written notification to the Consultant and without notice to any known guarantor or surety, make changes in the general scope of the services to be performed under this Contract. If any such changes cause an increase or decrease in the cost of, or the time required for the performance of this Contract, an equitable adjustment may be made in the Contract price or period of performance, or both, and this Contract shall be modified in writing accordingly. Any claim by the Consultant for adjustment under this clause must be asserted within thirty (30) days from the date of Consultant's receipt of the notice of such change; Provided, however, that the COMMISSION may, upon determining that the facts justify such action, receive and act upon such claim asserted at any time

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prior to final payment under this Contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this Contract entitled "Disputes." However, nothing in this clause shall excuse the Consultant from proceeding with this Contract as changed.

If the change was caused by the Consultant's failure to perform any aspect of the Contract, the COMMISSION shall not be responsible for any additional costs or delays attributable to the change in work.

27. DISPUTES -- Except as otherwise provided in this Contract, when a dispute arises between the parties and it cannot be resolved, either party may request a dispute hearing with the COMMISSION.

The request for a dispute hearing must be in writing; state the disputed issues; state the relative positions of the parties; state the Consultant's name, address, and Contract number; and be mailed to the COMMISSION and both parties Contract Manager within three (3) working days after the parties agree that they cannot resolve the dispute.

The other party shall send a written answer to the statement to the other parties involved within five (5) working days.

The COMMISSION shall review the written statements and reply to the parties involved within ten (10) working days. The COMMISSION may extend this period if necessary by notifying the parties.

The parties may agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

28. TERMINATION FOR DEFAULT

In the event the COMMISSION determines the Consultant has failed to comply with the conditions of this Contract in a timely manner, the COMMISSION has the right to suspend or terminate this Contract. Before suspending or terminating the Contract, the COMMISSION shall notify the Consultant in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the Contract may be terminated or suspended.

In the event of termination or suspension, the Consultant shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original Contract and the replacement or cover Contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising charges and staff time.

The COMMISSION reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit the Consultant from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Consultant or a decision by the COMMISSION to terminate the Contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the Consultant: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence. The rights and remedies of the COMMISSION provided in this Contract are not exclusive and are, in addition to any other rights and remedies, provided by law.

29. TERMINATION FOR CONVENIENCE – When it is in the best interest of the COMMISSION, the COMMISSION may terminate this Contract for convenience, in whole or in part, by ten (10) calendar day's written notice to the Consultant. No claim for damages of any kind or loss of

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anticipated profits on deleted or terminated work will be allowed because of the termination or change order deleting work. The COMMISSION may also terminate the Contract under this section if its authority to perform any of its duties are withdrawn, reduced or limited in any way after the commencement of this Contract and prior to normal completion and/or in event that the COMMISSION's funding to compensate the Consultant is withdrawn, reduced or limited in any way.

If this Contract is so terminated, the COMMISSION shall be liable for services rendered through the effective date of termination, including those direct costs necessarily and actually incurred by the Consultant in anticipation of performing the work that has been deleted or terminated.

30. TERMINATION PROCEDURES — In addition to the procedures set forth below, if the COMMISSION terminates this Contract in whole or in part, the Consultant shall follow any procedures the COMMISSION specifies in the COMMISSION's Notice of Termination. Upon termination of this Contract, the COMMISSION, in addition to any other rights provided in this Contract, may require the Consultant to deliver to the Commission any property specifically produced or required for the performance of such part of the Contract as has been terminated.

The section titled Treatment of Assets shall apply in such property transfer. Unless otherwise provided herein, the COMMISSION shall pay to the Consultant the agreed upon price for completed work and services accepted by the COMMISSION and the amount agreed upon by the Consultant and the COMMISSION for (1) completed work and services for which no separate price is stated, (2) partially completed work and services, (3) other property or services which are accepted by the COMMISSION, if any, and (4) the protection and preservation of property, unless the termination is for default, in which case the COMMISSION shall determine the extent of the liability of the COMMISSION, if any. Provided; that in no event shall the COMMISSION pay to the Consultant an amount greater than Consultant would have been entitled to if this Contract had not been terminated. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this Contract. The COMMISSION may withhold from any amount due the Consultant such sum as the COMMISSION determines to be necessary to protect the COMMISSION against potential loss or liability.

31. GOVERNING LAW -- This Contract shall be construed and interpreted in accordance with the laws of the state of Washington and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

The Consultant agrees to accept service of process within the state of Washington at any office maintained therein. If such offices are not maintained, the Consultant designates the Secretary of State as an agent for the purpose of service of process.

32. SEVERABILITY -- The provisions of this Contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Contract.